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18-FILED OF PTO 11/3

In re Application :  
Gillies et al. :  
Application No. 10/005,212 :  
Filed: December 4, 2001 :  
Attorney Docket No. LEX-002C1 :  
DECISION ON APPLICATION  
FOR PATENT TERM ADJUSTMENT

This is a decision on the "Application for Patent Term Adjustment under 35 U.S.C. § 154(b) and 37 C.F.R. § 1.705(b)," filed September 7, 2004. Applicants request that the initial determination of patent term adjustment be corrected from two hundred seventy-four (274) days to two hundred ninety-one (291) days.

The request for reconsideration of the initial determination of patent term adjustment is GRANTED.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the notice of allowance is two hundred ninety-one (291) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 8, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 274 days. The instant application for patent term adjustment was timely filed with payment of the Issue Fee. Applicants dispute the number of days reduced for the filing of their response to the Notice to File Missing Parts application mailed January 31, 2002. Applicants state that the application was filed via Express Mail deposited May 31, 2002. In thereof, applicants submit a copy of their itemized return postcard. Thus, applicants contend that the reduction for this delay should be 31 days, not 4.

Applicants state that the patent issuing from this application is subject to a terminal disclaimer.

Applicants argument is well-taken. A review of the file confirms that applicants' response to the Notice to File Missing Parts of Application mailed January 31, 2002, record in the application with a date of receipt



May 31, 2002. This was outside of the three-month period under 37 CFR 1.704(b). However, the period of delay was thirty-one (31) days, not 48 days.

In view thereof, the correct Patent Term Adjustment at the time of mailing of the notice of allowance is 291 days (344 - (31 +22)).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Publishing Division for processing into a patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

*Kerry A. Ferriter  
for*

Karin Ferriter  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

Enclosure: Copy of REVISED PAIR screen